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January 8, 2016

The Honorable Charles R. Breyer  
 United States Senior District Judge  
 United States District Court  
 Northern District of California  
 San Francisco Courthouse  
 450 Golden Gate Avenue  
 San Francisco, CA 94102

RE: *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*, MDL NO. 2672 CRB (JSC), Response to Pretrial Order #2

Dear Judge Breyer,

Please consider this letter in support of my application for a co-lead counsel or steering committee member position in the above referenced matter.

Preliminarily, I am very excited to be considered for a lead counsel position and am qualified to serve. Pursuant to this Court's December 22, 2015 Pretrial Order #2, I will address the following eight criteria:

**Criteria 1:** I have been a trial lawyer for over 35 years and am Board Certified by the Florida Bar in Civil Trial and rated AV by Martindale-Hubbell. At the beginning of my practice, I represented personal injury victims in often-catastrophic single event cases, trying dozens of such cases to verdicts. In the late 90s, my practice transitioned into more complex, consumer litigation given my former firm's representation of the State of Florida in the tobacco litigation.

From this time to the present, I have always applied my experience as a civil litigator to contribute to my firms' efforts in complex litigation. During the Fen-Phen litigation, for example, I served as chief architect of an overarching, all-inclusive nationwide trial package and strategy, including a comprehensive chronology that was hyperlinked to the litigation's most important documents.

I have found and developed central, often MDL-wide, expert witnesses in consumer litigations. During the Rezulin litigation, I located the largest prescriber in the entire United States, Ziad Mamish, M.D., and worked him up for the MDL. He revealed that the manufacturer's marketing and advertising efforts to prescribers were materially different from its representations to the FDA. Recently, I recruited Scott E Delacroix, Jr. M.D. to the Actos litigation, MDL No. 2299, whose testimony as the sole plaintiff expert in urology and urologic oncology in the only bellwether trial to date resulted in a nine billion dollar verdict.

Plaintiffs in the VW litigation already have such an expert in Gerald J. Micklow, Ph.D., an aerospace and mechanical engineering professor from Florida Institute of Technology, whose career has been spent exploring the challenges of controlling nitrous oxide emissions in internal combustion engines. I have retained Dr. Micklow who has presented alongside lawyers at several litigation conferences that my firm has hosted around the country addressing Volkswagen's admitted mishandling of nitrous oxide emission levels.

My leadership has gone well beyond serving behind the scenes in complex litigation. I was lead Florida counsel in a class action case against Walmart that consisted of the representation of a very large class of Floridians for claims of not being compensated for off-the-clock work, *Ouellette v. Walmart*, in the Circuit Court of the Fourteenth Judicial Circuit in and for Washington County, Florida, Case No. 67-01-CA-326.

If appointed, I will devote my own talents, experience, and time as well as the support, expertise and time of my colleagues whose experience is set forth below and in the enclosed resume.

**Criteria 2:** The *Ouellette* case was litigated for approximately eight years and concluding matters such as class settlement approval, fee petitions, and objectors were handled by the Honorable Colby Peel, 1293 Jackson Avenue, Chipley, Washington County, Florida 32428, (850) 638-6268.

While, if appointed, this would be the first appointed MDL leadership position I would have served in my 35 years as a civil litigator, my partners have served in numerous appointed positions in national consumer complex litigation. The judges overseeing these cases are very familiar with my firm's work product and could speak to those contributions, which are set forth in the firm's resume, attached as Exhibit 1.

I have practiced before most all of the Circuit Court Judges in the First Judicial Circuit of the State of Florida any of whom would be willing to comment on my ability and adherence to the highest ethical standards of conduct.

**Criteria 3:** Perhaps unique among my fellow applicants, if appointed I intend to take no further leadership positions in any other litigation and will devote most, if not all, of my professional time to this litigation.

Along with my partners, I believe this to be among the most important multi-district litigation in history, raising tremendous public policy implications. Consumers are best served by a Lead Counsel and Steering Committee member willing to make such a dedicated commitment.

**Criteria 4:** I consider cooperation and collaboration among the greatest assets to ensuring an equitable resolution of litigation. In my service on the Florida Bar Board of Governors for the past eight years, I work with lawyers of all stripes to reach resolution on disputed policy and political issues.

The board certification process in Florida requires initial and then periodic peer review by colleagues on both sides of the table and judges for continued maintenance of the designation as an expert. I live my personal and professional life by the Golden Rule and as an Eagle Scout.

**Criteria 5:** I consider the opportunity to serve an honor and if appointed, will continue to commit the resources, including money, people, and time, necessary to advance this case expeditiously. With 19 attorneys and over 125 staff members, my firm has the availability to assign additional attorneys and staff, as necessary. Our firm even has an office conveniently located in Oakland, California.

Nathan Bess, also a partner at Aylstock, Witkin, Kreis & Overholtz, PLLC, will devote his efforts to this litigation. Notably, Mr. Bess is fluent in German and has experience in reviewing, translating, and supervising the translation of documents in cases against German drug manufacturers. He was invaluable in taking the depositions of Bayer employees in the *Trasylol* and *Yaz* litigations, and Boehringer Ingelheim employees in the *Pradaxa* litigation.

Beyond these examples, however, my firm's actions to date have exhibited its strong commitment of resources to this litigation. My partners have presented at no fewer than four separate scholarly presentations on this litigation since September. In fact, our firm has chaired three such presentations to lawyers from around the country. As noted above, I have already retained Dr. Micklow and have had several discussions with economists about the development of a damage model. Presently, my firm has over 250 contracted clients, 4 of which are pending before this Court.

We will commit the resources needed to see this litigation through.

**Criteria 6:** I am willing to serve as lead, co-lead counsel or as a plaintiff steering committee member and will dedicate the same commitment of resources regardless of the position.

**Criteria 7:** I desire to represent all plaintiffs. I have represented individual consumers, classes of consumers and businesses, alike.

**Criteria 8:** Aylstock, Witkin, Kreis & Overholtz, PLLC has more than sufficient human and financial resources to participate as a full partner in working and funding all aspects of this litigation. Indeed, the firm has negotiated and settled two master settlement agreements with *Fortune* 500 companies each in excess of a billion dollars.

Very sincerely yours,



STEPHEN HERRE ECHSNER

Encl: Resume, Exh. 1  
List of Counsel Supp. Appoint., Exh. 2